A

PP

v.

WONG KUOH MING

B HIGH COURT SABAH & SARAWAK, KOTA KINABALU
RICHARD MALANJUM CJ (SABAH & SARAWAK)
[CASE NO: BKI-42-2-1-2013]
18 MARCH 2014

C ***CRIMINAL LAW:*** *Anti-Trafficking in Persons and Anti Smuggling of Migrants Act 2007 - Section 13 - Elements of offence - Whether prima facie case established - Whether sexual exploitation a requirement under s. 13 - Whether accused cast reasonable doubt on prosecution case*

D ***CRIMINAL PROCEDURE:*** *Charge - Amendment - Changes to date and time and clarifying act allegedly committed by accused by additional phrase - Whether original charge adequate in particulars - Whether there were material differences between original charge and amended charge - Whether evidence supported amended charge - Anti-Trafficking in Persons and Anti Smuggling of Migrants Act 2007, s. 13*

E

The appellant ('accused') was charged under s. 13 of the Anti-Trafficking in Persons and Anti Smuggling of Migrants Act 2007 ('ATiP') read with s. 511 of the Penal Code for attempting to traffic in one Vietnamese woman ('PW1') for the purpose of
F exploitation. The accused was initially discharged and acquitted of the charge ('the then charge') at the end of the prosecution case by the Sessions Court Judge. The prosecution appealed and the High Court Judge, who allowed the appeal, ordered the defence of the accused to be called. At the commencement of the
G defence, the prosecution amended the then charge by changing the date and time of the alleged offence as well as clarifying the act allegedly committed by the accused by adding the phrase 'orang bagi maksud ekploitasi dengan cuba memperdayakan'. It was the evidence of PW1 that her friend, Trang, in the presence
H of Trang's husband, Tony, and other persons including the accused, had offered her a job as a waitress in Trangs's bar business in Malaysia. PW1 and another girl ('PW2') accepted the offer and the accused bore their travel costs from Vietnam to Malaysia. However, upon arrival at Kota Kinabalu, PW1
I requested the accused to change her flight back to Vietnam but was refused by the accused. Instead, PW1 and PW2 were instructed to provide sexual services to customers secured by the

accused. In order to escape from the grip of the accused, PW1 jumped down from the first floor of the house and sought help from the police. The defence of the accused was that he helped PW1 and PW2 while they were in Kota Kinabalu by providing them a place to stay and during the stay, they were free to move around and were not locked in. The accused also denied ever trying to sell or exploit PW1 and PW2 for sexual services to customers. Upon hearing the defence and having considered the case as a whole, the Sessions Court Judge again discharged and acquitted the accused and hence, this appeal. The accused contended that the defence was called premised on the then charge and therefore, the evidence adduced by the prosecution did not support the amended charge.

Held (allowing appeal; convicting accused):

(1) For the offence to arise under s. 13 of the ATiP, there has to be trafficking in persons not being a child, that it involves one or more of the means stipulated in the section such as deception and that the purpose of such trafficking is for the exploitation of the victim or victims. The completed offence under s. 13 of the ATiP does not require the victim of trafficking to have been in fact sexually exploited. (para 37)

(2) It was within the discretion of the prosecution to amend the charge at any stage of the proceedings. There was no material difference between the then charge and the amended charge. The latter merely elaborated the means employed to secure the trafficking of PW1. The allegation in the then charge seemed to be inadequate in particulars. On scrutiny of the evidence adduced, it was clear that at the close of the case for the prosecution, a *prima facie* case was established for the offence under s. 13 of the ATiP read with s. 511 of the Penal Code. There was also evidence to support the amendment involving the times and dates. Accordingly, the issue of the amended charge raised by the accused had no merit. (paras 40-43)

(3) It was in order in this appeal to review the evidence adduced at the end of the case for the prosecution. It was clear that the evidence of PW1 as corroborated by PW2 and taking into account the other evidence adduced that there was a *prima facie* case established for the offence under s. 13 of ATiP read with s. 511 of the Penal Code. Thus, there was a case for the accused to answer even based on the amended charge. (para 44)

(4) The defence of the accused was one of mere denial. He denied being present when PW1 was deceptively made to accept the offer of work as a bar waitress in Malaysia and denied taking her to Malaysia. He had also denied restraining her movement. The explanation given by the accused for taking PW1 and PW2 to his house was that he took pity on them as they had nowhere to go upon arrival in Kota Kinabalu, Sabah. However, such explanation defied logic as PW1 and PW2 would not have come to Kota Kinabalu unprepared if indeed they came on their own. (paras 46 & 49)

(5) It is trite law that as a general rule 'failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony'. The accused did not put forward his case by way of cross-examination to the witnesses especially when PW1 and PW2 gave their evidence which might have given some credence to his subsequent denials when he gave his evidence. Further, there was no basis to say that the prosecution should have challenged the cautioned statement as the cautioned statement of the accused contained nothing but denials on what took place as narrated by PW1 and PW2. (paras 47 & 52)

(6) There was also no basis to insist on the calling of Tony as a witness for the prosecution. It was the accused who should have called Tony as a witness to confirm that the offer of work in his bar was not a ruse. In his evidence and in his cautioned statement, the accused did not implicate Tony of being involved in bringing PW1 and PW2 to Malaysia for sexual activities. In view of the nature of the defence of the accused, being mere denials, his defence had not cast a reasonable doubt in the prosecution's case. The Sessions Court Judge had obviously failed to appreciate matters which ordinarily should have been taken into account. The prosecution had proved its case beyond reasonable doubt on the guilt of the accused for the offence. (paras 53, 54 & 56)

Case(s) referred to:

Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***
Kho Ah Soon v. PP [1969] 1 LNS 67 HC ***(refd)***
Mat v. PP [1963] 1 LNS 82 HC ***(refd)***
PP v. Dato' Seri Anwar Ibrahim & Anor [2001] 3 CLJ 313 HC ***(refd)***
R v. Cheah Teow Peng [1951] 1 LNS 79 HC ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***

Legislation referred to:
Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, ss. 2, 13
Penal Code, s. 511

For the prosecution - Afzan Abd Kahar; DPP
For the accused - Chin Tek Ming (Hamid Ismail with him); M/s Chin Jingulam & Assocs

Reported by S Barathi

JUDGMENT

Richard Malanjum CJ (Sabah & Sarawak):

Introduction

[1] The appellant is appealing against the discharge and acquittal of the respondent on a charge for attempting to traffic in one Vietnamese woman (PW1) for the purpose of exploitation as defined in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ('ATiP'). The charge preferred against the respondent was under s. 13 of ATiP read with s. 511 of the Penal Code.

[2] For convenience in this judgment the appellant is referred to as the prosecution while the respondent as the accused.

[3] This case has quite a convoluted history. The accused was initially discharged and acquitted at the end of the prosecution's case by the learned trial Sessions Court Judge. The then charge read:

> Bahawa kamu pada 17hb Oktober 2011, jam lebih kurang 2100 hrs di No. 4, Taman Millenium Heights, Jalan Bundusan, dalam Daerah Penampang, di dalam Negeri Sabah, telah cuba memperdagangkan penama Nguyen Thi Thanh Loan, PPT: B5577606, dan dengan itu, kamu telah melakukan suatu kesalahan yang boleh dihukum dibawah seksyen 13 Akta Anti Pemerdagangan Orang 2007 dan dibacakan bersama Seksyen 511 Kanun Keseksaan.

[4] Dissatisfied with the verdict the prosecution appealed to the High Court. That appeal was allowed and the then High Court Judge who heard that appeal ordered the defence of the accused to be called.

[5] It was the finding of the said High Court Judge that the learned trial Sessions Court Judge had seriously misdirected himself in that he considered the case as a sexual case rather than an offence under ATiP. Thus, after perusing the evidence adduced the said High Court Judge ordered the learned trial Sessions Court Judge to call for the defence of the accused. It could therefore be accepted that the said High Court Judge was satisfied that a *prima facie* case had been made out by the prosecution on the then charge preferred against the accused.

[6] At the commencement of the defence the prosecution amended the then charge to read:

> Bahawa kamu pada 18hb October 2011 jam lebih kurang 0200 hrs bertempat di No. 4 Taman Milineium Heights, Jalan Bundusan, dalam Daerah Penampang, dalam Negeri Sabah, telah cuba memperdagangkan orang bagi maksud eksplotasi dengan cara memperdayakan Nguyen Thi Thanh Loan, P/P: B5577606 dan dengan itu kamu telah melakukan kesalahan di bawah seksyen 13 Akta Anti Pemerdagangan Orang and turut dibacakan bersama seksyen 511 Kanun Keseksaan.

[7] The amended charge involved, *inter alia*, changes in the date and time of the alleged offence, that is, from 17 December 2011 at 9pm to 18 December 2011 at 2am as well as clarifying the act allegedly committed by the accused by adding the phrase 'orang bagi maksud eksplotasi dengan cara memperdayakan'. Obviously the prosecution intended the wordings of the amended charge to be as closely as possible to the words in the section under which the accused was charged. (See: *Kho Ah Soon v. Public Prosecutor* [1969] 1 LNS 67; [1970] 1 MLJ 42). The changes as contained in the amended charge were taken by learned counsel for the accused as a point in this appeal. They will be dealt with later.

[8] After hearing the defence and having considered the case as a whole the learned trial Sessions Court Judge again discharged and acquitted the accused. Hence this appeal.

The Case For The Prosecution

[9] It was not in dispute that the victim (PW1) in this case was not a child but a 24 years old female from Tayninh, a province in Vietnam. One element of s. 13 was thus satisfied.

[10] It was the evidence of PW1 that in her hometown she had a friend known as Trang. One day she was called by Trang to come to her house. PW1 testified that Trang in the presence of Tony who was known to her as Trang's husband, the accused and some other persons including her mother, told PW1 that her bar business with her husband in Malaysia needed people to serve drinks to customers. Trang then asked PW1 and another girl Huynh Thi Kieu Oanh (PW2) if they would accept the job. Both accepted.

[11] Following their acceptance PW1 and PW2 were taken to an airport in Vietnam on 15 October 2011 by Tony and the accused known to PW1 only as the 'Boss'. Trang was also supposed to come with them but had some travel problems and thus could not follow them.

[12] It was the accused who bought the air tickets for PW1, PW2 and himself from Vietnam to Kota Kinabalu, Sabah.

[13] Upon arrival at Kota Kinabalu, the accused's girlfriend by the name Josie Tseu Ci Ci (PW7) picked them up from the airport and took them to the accused's house.

[14] On 17 October 2011, PW1 called her Chinese boyfriend who was working in Singapore. He asked her to return to Vietnam. The accused had earlier on bought her a sim card for her mobile phone thus enabling her to call her boyfriend.

[15] Accordingly PW1 requested the accused to change her flight back to Vietnam immediately. However, the accused asked her to stay for a week to earn money since she owed him a sum of RM2,600 being the expenses incurred in taking her from Vietnam to Kota Kinabalu, Sabah.

[16] But PW1 was reluctant to work and insisted on going back to Vietnam. Even her boyfriend was ready to compensate RM4,000 to the accused for the expenses incurred but the accused did not let her go.

[17] The accused then told PW1 that she had to pay RM10,000 plus RM2,600 before he could buy her a return ticket. Even such demand was agreed to by her boyfriend. But fearing that the accused would not honour his words after receipt of payment PW1 offered to pay him RM5,000. The accused refused to accept the offer.

[18] At around 6pm on the same day, the accused asked both PW1 and PW2 to see a customer but PW1 refused.

[19] Thereafter the accused left with a friend. At around 9pm on the same day the accused returned and asked PW1 to enter an empty room upstairs of the house. There the accused told PW1 that if she wanted to return she must pay the money otherwise she had to stay and work as a prostitute.

[20] On 18 October 2011, at around midnight, PW1 jumped out through a window of the bedroom that she shared with PW2 on the first floor of the house. She twisted her ankle as a result of the jump but she still managed to run until she met a man who took pity on her. He allowed her to use his handphone to contact her boyfriend in Singapore as well as giving her shelter in a house. Meanwhile the police was informed about PW1. At about 6am the police came to take PW1 from the house and brought her to the police station where she lodged a police report. PW2 was also saved by the police at around 11am on the same day from the accused's house.

The Defence

[21] The accused elected to give a sworn statement from the witness box. He did not call any other witness.

[22] In his evidence the accused testified that during his flight from Vietnam to KLIA on 15 October 2010 he was seated next to PW1. So while talking to her he came to know that she was flying to Kota Kinabalu.

[23] Upon arriving at Kota Kinabalu Terminal 2 the accused said that he saw PW1 and PW2 walking aimlessly not knowing where to go. So he took pity on them and invited them to come and stay in his rented house. They accepted and so he took them to the house where he allocated them a room upstairs just opposite the room he was occupying with PW7.

[24] It was also the evidence of the accused that during the stay of PW1 and PW2 in his rented house they were free to move around. They were not locked in. He also took them out for meals.

[25] The accused denied bringing male friends to his rented house to have sex with PW1 and PW2. He also denied offering them any work.

[26] Basically therefore the accused said that he was only a good Samaritan who helped PW1 and PW2 while they were in Kota Kinabalu. He denied ever trying to sell or exploit PW1 and PW2 for sexual services to customers.

At The Trial Sessions Court – Defence Stage

[27] At the end of the whole case the learned trial Sessions Court Judge held that while he might not believe the story of the accused nevertheless he did not find it as an afterthought as contended by the prosecution.

[28] The learned trial Sessions Court Judge also agreed with the defence that the prosecution failed to challenge the cautioned statement given by the accused and tendered as a defence exhibit. Further, the learned trial Sessions Court Judge found that the police did not even investigate the content of the statement of the accused especially on the involvement of Tony.

[29] Thus, applying the principles in the case of *Mat v. PP* [1963] 1 LNS 82; [1963] 1 MLJ 263 and *Alcontara a/l Ambross Anthony v. PP* [1996] 1 CLJ 705; [1996] 1 MLJ 209 the learned trial Sessions Court Judge held that the defence had successfully cast a reasonable doubt in the prosecution's case. He therefore acquitted and discharged the accused.

This Appeal

[30] Dissatisfied with the decision of the learned trial Sessions Court Judge the prosecution lodged an appeal to this court. In its petition of appeal the prosecution complained that (verbatim):

a. The learned Sessions Court Judge had erred in law and facts when he held that evidence of the respondent is true because the Prosecution did not challenge the evidence produce by the Respondent that is the cautioned statement;

b. The learned Sessions Court Judge was wrong when he held that it is fatal for the Prosecution to call Tony *(sic)* a witness said by the Respondent whilst the evidence by the victim in this case is clear that the Respondent was the person in trafficking them to Malaysia;

c. The learned Sessions Court Judge had erred in law and facts when he held that the respondent had successfully raised reasonable doubt whilst in his judgment he said that he may not believe the respondent.

[31] In respect of the second ground in the petition of appeal there appears to be an error. In the grounds of judgment of the learned trial Sessions Court Judge he did not say that it was fatal to call Tony as a witness. In fact it was the other way.

[32] Be that as it may, before this court it was contended by learned counsel for the accused that the defence was called premised on the then charge. As such the evidence adduced by the prosecution did not support the amended charge.

[33] In view of the connotation in the submission it is only fair that it should be dealt with first before considering the grounds in the petition of appeal.

[34] Now, on perusal of the then charge and the amended charge it was quite obvious that the former only employed the words 'telah cuba memperdagangkan' to describe the *actus reus* of the accused while in the latter the accused was alleged to have 'cuba memperdagangkan orang bagi maksud eksploitasi dengan cara memperdayakan Nguyen Thi Thanh Loan, P/P: B5577606' (PW1). Indeed at a glance there was no material difference between the then charge and the amended charge.

The latter merely elaborated the means employed to secure the trafficking of PW1.

[35] Section 13 of ATiP reads:

> Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means:
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> (a) threat;
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> (b) use of force or other forms of coercion;
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> (c) abduction;
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> (d) fraud;
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> (e) deception;
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> (f) abuse of power;
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> (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
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> (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person, commits an offence and shall, on conviction, be

punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

[36] Section 2 of ATiP provides that:

"trafficking in persons" means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act;

"exploitation" means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.

[37] Thus, for the offence to arise under s. 13 of ATiP there has to be trafficking in persons not being a child, that it involves one or more of the means stipulated in the section such as deception and that the purpose of such trafficking is for the exploitation of the victim or victims. It should be noted that the completed offence under s. 13 of ATiP does not require for the victim of trafficking to have been in fact sexually exploited. (See: Anti-Human Trafficking Manual For Criminal Justice Practitioners – Module 1 published by the United Nations 2009).

[38] As such in the amended charge preferred against the accused it was alleged that he attempted to traffic PW1 not being a child by means of deception for the purpose of exploitation. It is quite surprising why the accused was not charged for a completed offence under s. 13. But then it is the prerogative of the prosecution to decide on what charge to prefer against the accused.

[39] The question therefore is whether the evidence adduced by the prosecution supported the amended charge. It should be borne in mind that when the High Court in the first appeal ordered for the defence to be called by the learned trial Sessions Court Judge it was based on the then charge in which the accused was alleged to have 'cuba memperdagangkan penama Nguyen Thi Thanh Loan, PPT: B5577606' (attempted to traffic PW1).

[40] With respect, the allegation in the then charge *vis-a-vis* s. 13 of ATiP read with s. 511 of the Penal Code seemed to be quite inadequate in particulars. Notwithstanding, on scrutiny of the

A evidence adduced it was clear that at the close of the case for the prosecution a *prima facie* case was established for the offence under s. 13 of ATiP read with s. 511 of the Penal Code.

[41] Further, on the amendment involving the times and dates
B there were also evidence adduced to support it. At any rate it was within the discretion of the prosecution to amend the charge at any stage of the proceeding. (See: *PP v. Dato' Seri Anwar bin Ibrahim & Anor* [2001] 3 CLJ 313; [2001] 3 MLJ 193; *R v. Cheah Teow Peng* [1951] 1 LNS 79; [1952] MLJ 216).

C
[42] Hence, the said High Court Judge was not in error when he ordered for the defence to be called although he should have also amended the then charge or at least indicated to the prosecution for such need.

D **[43]** Accordingly, the issue on the amended charge raised by learned counsel for the accused in this appeal had no merit.

[44] In any event, *ex abundanti cautela* and bearing in mind that an appeal is a rehearing, it is in order in this appeal to review the
E evidence adduced at the end of the case for the prosecution. And upon review it was clear that the evidence of PW1 as corroborated by PW2 and taking into account as well the other evidence adduced, there was a *prima facie* case established for the offence under s. 13 of ATiP read with s. 511 of the Penal Code,
F namely, that:

(i) the PW1 was not a child;

(ii) PW1's journey to Malaysia was organised and funded by the accused ('conveying');

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(iii) the accused also provided her a room to stay ('harbouring') but controlled her freedom of movement by locking the front and kitchen doors;

H (iv) there was deception practised in securing her agreement ('recruiting') to come to Malaysia, namely, the promise of work as a bar waitress only and not for sexual services, yet there was no such work and no such bar identified to work in other than the accused subsequently demanding her to provide
I sexual services to customers that he found ('for the purpose of exploitation – sexual exploitation'). And although the contact with PW1 might have been through another person by the name of Trang in Vietnam the accused was present

when the communication took place and he proceeded to execute the deception practised by taking PW1 with him to Malaysia;

(v) there was the demand for PW1 to go to a hotel to sexually entertain a customer. And although PW1 did not comply with the demand the offence under s. 13 read with s. 511 of the Penal Code was completed when PW1 was recruited through deception and harboured in the house of the accused for the purpose of sexual services. It was sufficient to show exploitation when PW1 was taken to Malaysia for the purpose of 'all forms of sexual exploitation'. The demand or even request made by the accused for PW1 to entertain a customer sexually confirmed that the trafficking of PW1 was for the purpose of sexual exploitation. The accused in this case should consider himself lucky as the prosecution merely preferred a charge of attempt against him;

(vi) there was also an explicit oral instruction given sternly by the accused to PW1 that she must provide sexual services to customers secured by him thus affirming the purpose of the trafficking of PW1;

(vii) PW1 could not move freely as she was kept in the house with the front and kitchen doors locked; and

(viii) PW1 could not simply return to Vietnam but had to jump down from the first floor of the house in the dead of night and injuring herself in the process in order to escape from the grip of the accused.

[45] Thus, there was a case for the accused to answer even based on the amended charge.

[46] The defence of the accused was one of mere denial. He denied, *albeit* indirectly, being in the house of Trang when PW1 was deceptively made to accept the offer of work as a bar waitress in Malaysia when there was no such work as admitted by him in his evidence. He denied taking her to Malaysia preferring to say that he met her by chance in-flight from Vietnam to Malaysia. He denied restraining her movement despite the fact that he did not even agree for her to return freely to Vietnam. Indeed the accused portrayed himself as a good samaritan for PW1 while she was in Kota Kinabalu, Sabah, Malaysia. But the actual circumstances that arose and the conduct of the accused contradicted his portrayal of himself.

[47] At the prosecution stage the accused did not put forward his case by way of cross-examination to the witnesses especially when PW1 and PW2 gave their evidence which might have given some credence to his subsequent denials when he gave his evidence. It is trite law that as a general rule 'failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony'. (See: *Wong Swee Chin v. PP* [1980] 1 LNS 138; [1981] 1 MLJ 212).

[48] As stated earlier if indeed PW1 was at liberty to leave the house any time she wanted, there was no rebuttal questions why she had to sneak in the middle of the night by jumping out of a window on the first floor of the house and in the process injured her ankle as confirmed by the medical doctor (PW9 – Dr. Zulaili binti Asri) who examined her.

[49] The accused said that he met PW1 by chance during his flight from Vietnam to Malaysia. He chatted with her. Yet his subsequent conduct showed otherwise. He provided PW1 and PW2 with accommodation including meals and the hair styling for PW2. His only explanation for taking them to his house was that he took pity on them as they had no where to go upon arrival in Kota Kinabalu, Sabah. Such explanation defied logic. Surely PW1 and PW2 would not have come to Kota Kinabalu unprepared if indeed they came on their own.

[50] And it was never rebutted by the accused when PW1 said that she did not know PW2 until she saw her at Trang's house. If that was the case they could not have arranged their travel plan together to Kota Kinabalu, Sabah, Malaysia yet they came together. This only confirmed the version of PW1 and PW2 that the trip was arranged by the accused.

Grounds Of Appeal

[51] In respect of the reasons given by the learned trial Sessions Court Judge against which the grounds of appeal were lodged there were in fact basically only two reasons, namely, the failure to challenge the cautioned statement of the accused and the failure to call Tony as a prosecution's witness.

[52] Upon careful reading of the cautioned statement of the accused it contained nothing but denials on what took place as narrated by PW1 and PW2. As such there was no basis to say

that the prosecution should have challenged the cautioned statement. Further, as indicated above the accused did not even put forward his version of the event at the prosecution's stage.

[53] As regards the non-calling of Tony as a witness for the prosecution, there was also no basis to insist calling such person. Although his name was mentioned by PW1 it was in reference to the fact that he was the alleged husband of Trang. He and Trang were said to have a bar that required waitresses to serve customers. In fact the accused should have called Tony as a witness to confirm that the offer of work in his bar was not a ruse. Further, in his evidence and in his cautioned statement the accused did not implicate Tony of being involved in bringing PW1 and PW2 to Malaysia for sexual activities.

[54] And in view of the nature of the defence of the accused, namely, mere denials, it is difficult to agree with the learned trial Sessions Court Judge that his defence had cast a reasonable doubt in the prosecution's case. Obviously the learned trial Sessions Court Judge failed to appreciate matters which ordinarily should have been taken into account.

[55] Accordingly, for the above reasons there are merits in the grounds of appeal by the prosecution.

[56] Thus, having considered the case as a whole in particular the evidence adduced by the prosecution and the accused and bearing in mind the respective burden and standard of proof required of both sides, it is clear that the accused had failed to cast a reasonable doubt in the prosecution's case. In the upshot the prosecution had proved its case beyond reasonable doubt on the guilt of the accused for the offence under s. 13 of ATiP read with s. 511 of the Penal Code.

Conclusion

[57] This appeal is therefore allowed. The decision of the learned trial Sessions Court Judge is set aside. The accused is hereby found guilty for the offence as per the amended charge. He is accordingly convicted for the offence under s. 13 of ATiP read with s. 511 of the Penal Code. Before sentencing the accused is invited to make his plea in mitigation and a reply from the prosecution.